



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2010

Ms. M. Ann Montgomery
Assistant County & District Attorney
Ellis County
1201 North Highway 77, Suite 104
Waxahachie, Texas 75165-7832

OR2010-10374

Dear Ms. Montgomery:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 386274.

The Ellis County Sheriff's Office (the "sheriff") received a request for all reports pertaining to a specified address during a specified period of time, including two specified reports. You state that you will release some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault,

¹Although you also raise section 552.103 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we do not address section 552.103. See Gov't Code §§ 552.301(e)(1)(A), .302.

pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find some of the submitted information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the sheriff must withhold the information it has marked under section 552.101 in conjunction with common-law privacy.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 10-04346 relates to a pending criminal prosecution. Based on your representation and our review, we conclude that the release of the information you have marked would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the sheriff may withhold the information you have marked under section 552.108(a)(1) of the Government Code.²

You assert portions of the remaining information are confidential pursuant to section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). Accordingly, the sheriff must withhold the information it has marked under section 552.130.³

Next, you have marked social security numbers in the remaining information under section 552.147 of the Government Code. This section provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.*

²As our ruling is dispositive, we need not address your argument under section 552.108(b)(1) of the Government Code for this information.

³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver’s license numbers under section 552.130 of the Government Code, without the necessity of requesting a ruling from this office.

§ 552.147. Therefore, the sheriff may withhold the marked social security numbers under section 552.147 of the Government Code.⁴

In summary, the sheriff must withhold the information it has marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff may withhold the information it has marked under section 552.108(a)(1) of the Government Code. The sheriff must withhold the information it has marked under section 552.130 of the Government Code. The sheriff may withhold the information it has marked under section 552.147 of the Government Code. The remaining information must be released to this requestor.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 386274

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.